



U.S. Citizenship
and Immigration
Services

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FILE:

SRC 07 800 22978

Office: TEXAS SERVICE CENTER Date: **NOV 19 2009**

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry R. Hew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner claims to be in the automated solutions banking industry. It seeks to permanently employ the beneficiary in the United States as an engineer. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹

The petition was electronically filed on July 26, 2007. The instructions for electronically filing a Form I-140, Immigrant Petition for Alien Worker, state that the required initial evidence must be received by the applicable Service Center within seven business days of filing. However, the petitioner did not submit the required initial evidence within seven business days. The petitioner also failed to provide a labor certification certified by the U.S. Department of Labor as required by statute. On April 7, 2008, the director denied the petition for failure to provide the required initial evidence and labor certification, stating "[t]o date, no evidence has been received in support of your petition."

Counsel appealed the decision on April 17, 2008.² Counsel's appeal brief claims that the initial evidence for the petition was timely submitted with the beneficiary's adjustment application. Counsel's appeal brief references as an exhibit a copy of the receipt notice for the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status. However, counsel did not provide a copy of the I-485 receipt notice with the appeal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). A review of the record indicates that the beneficiary's Form I-485 was stamped as received on August 8, 2007, which is nine business days after the petition was filed. Therefore, even if, *arguendo*, counsel had submitted the initial evidence with the adjustment application, the evidence would still not have been timely filed.

The AAO's appellate jurisdiction is set forth at 8 C.F.R. § 103.1(f)(3)(E)(iii), which provides for appellate jurisdiction over denials of employment-based immigrant visa petitions, except when the

¹There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

²Form I-290B, Notice of Appeal or Motion, indicates that counsel is submitting an appeal. However, the submitted brief states that counsel is filing a Motion to Reopen the petition. In addition, on June 19, 2009, counsel sent a letter to the AAO stating that the request for an appeal on Form I-290B was a clerical error, and that she intended to file a Motion to Reopen the petition.

denial of the petition is based upon the lack of a certified labor certification under section 212(a)(5)(A) of the Act. In this matter, the petition was denied because of the lack of a certified labor certification. Accordingly, as there is no appeal from such a denial, the AAO has no jurisdiction to issue a decision in this case and the appeal must be rejected.

However, as the petitioner submitted evidence on appeal, including a labor certification, this matter shall be remanded to the Texas Service Center to be considered as a motion to reopen and reconsider.

ORDER: The appeal is rejected. The matter is remanded to the Texas Service Center to be considered as a motion to reopen and reconsider.